INSURANCE — ACCIDENT INSURANCE — REQUIREMENT OF IMMEDIATE NOTICE OF ACCIDENT IN EMPLOYER'S LIABILITY INSURANCE. — An employers' liability insurance policy required the insured to give immediate notice of an accident. A rule was posted in the office of the insured's stable-foreman requiring drivers to report all accidents immediately. The foreman, learning of an accident caused by one of the drivers, failed to report it. The insured's general manager gave immediate notice to the insurer when he learned of the accident one month later. *Held*, that the insured cannot recover because of failure to give immediate notice. *Woolverton* v. *Fidelity & Casualty Co.*, 190 N. Y. 41.

Failure to satisfy a requirement of immediate notice in an accident insurance contract is a bar to recovery. *Travellers' Ins. Co.* v. *Myers*, 62 Oh. St. 529. Such a requirement, of course, cannot be taken literally. It is satisfied by notice given with due diligence under all the circumstances and without unnecessary delay. *Ward* v. *Maryland Casualty Co.*, 71 N. H. 262. The insurer's duty in the present case is to exonerate the insured, and it is entitled to every facility for effecting an equitable settlement with the injured party. Since an immediate investigation of the facts is essential to an accurate determination of the existence and extent of liability, it is just to interpret the requirement as imposing upon the employer the duty not only of reporting accidents which have come to his personal attention, but of immediately discovering and reporting all accidents. Since this duty, by its nature, must be partially performed by agents, and the principal is responsible for the negligent performance of a delegated duty, the failure of the foreman to use due diligence in reporting the accident may be imputed to the insured, and the requirement of immediate notice is not satisfied. *Northwestern, etc, Co.* v. *Maryland Casualty Co.*, 86 Minn. 467; *contra*, *Mandell* v. *Fidelity & Casualty Co.*, 170 Mass. 173.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — NATIONAL ARBITRATION ACT. — The Act of Congress of June 1, 1898, c. 370, § 10, 30 Stat. at L. 424, provided that any common carrier engaged in interstate commerce or any agent thereof who "shall threaten any employee with loss of employment or shall unjustly discriminate against any employee because of his membership" in a labor organization, "is hereby declared to be guilty of a misdemeanor." *Held*, that the statute is unconstitutional. *Adair* v. *United States*, U. S. Sup. Ct., Jan. 27, 1908.

The decision is primarily based on the ground that the statute, in interfering with freedom of contract, is an unwarranted invasion of the right to personal liberty and property guaranteed by the Fifth Amendment. The court further holds that the Act is not a regulation of commerce within the meaning of the Constitution, and distinguishes it from the Safety Appliance and Employers' Liability Acts. *Cf. Johnson* v. *Railroad*, 196 U. S. 1; *Employers' Liability Cases*, 207 U. S. 463. One dissenting justice declares that the purpose of the Act was to promote the freedom and safety of commerce by prevention of strikes, and was therefore within the power of Congress. The other is of opinion that such a limited interference with freedom of contract, when supported by public policy, is not prohibited by the Fifth Amendment. For a criticism of the Act as a regulation of commerce, see 20 HARV. L. REV. 499.

INTERSTATE COMMERCE — WHAT CONSTITUTES INTERSTATE COMMERCE — RULE OF ULTIMATE DESTINATION. — One A, wishing to go from X, in Arkansas, to Z, in Texas, tried to purchase a ticket from X to Y, in Arkansas, and then to purchase another ticket from Y to Z. *Held*, that his attempt to purchase a ticket to Y is a matter of intrastate commerce to which state rate regulations apply. *Kansas, etc., Ry. Co.* v. *Brooks*, 105 S. W. 93 (Ark.).

It is well settled that a common carrier, although only carrying goods intrastate, is engaged in interstate commerce if such goods are *in transitu* to another state. *The Daniel Ball*, 10 Wall. (U. S.) 557. By the better view the ultimate destination intended by the shipper is the test of its being an intrastate or interstate shipment. *Houston, etc., Co.* v. *Ins. Co.*, 89 Tex. 1; see

20 HARV. L. REV. 652. If the goods have been shipped *bona fide* to a consignee in another state, and are then re-shipped by the consignee to another point within the state, such re-shipment is not a continuation of the interstate shipment. *Gulf, etc., Ry. Co.* v. *Texas*, 204 U. S. 403. But where the intrastate shipment is a mere subterfuge to benefit *pro tanto* by the reduced rates required by the state, the shipment is interstate. *State* v. *Gulf, etc., Ry. Co.*, 44 S. W. 542 (Tex.). There seems no reason why the rule in regard to freight should not be equally applicable to passenger traffic. In the present case, since A's ultimate destination was undoubtedly without the state and his attempt to purchase a ticket to Y a mere pretext to secure the reduced fare, he should be considered an interstate passenger.

LIMITATION OF ACTIONS — OPERATION AND EFFECT OF BAR BY LIMITATION — EFFECT ON CO-TENANT UNDER DISABILITY. — An elevated railroad ran for the period of the statute of limitations in front of land owned by five tenants in common, one of whom was under a disability. On suit by their grantee the railroad claimed a right by prescription. *Held*, that the plaintiff can recover only one-fifth of the total injury caused by the defendant. *Taggart* v. *Manhattan Ry.*, 38 N. Y. L. J. 1222 (N. Y., Sup. Ct., Dec. 1907).

The ordinary easement subjects the servient tenement to the dominant in such a way that it must necessarily exist against all those seised. Therefore one tenant in common cannot grant or reserve an easement valid against the others, since they have done nothing to subject their interests to a new burden. *Marshall* v. *Trumbull*, 28 Conn. 183; see *Clark* v. *Parker*, 106 Mass. 554. Similarly no easement should ordinarily be acquired upon the termination of the statutory period of limitations, if one co-tenant is under a disability. See *Watkins* v. *Peck*, 13 N. H. 360, 376. In the case of adverse possession, however, since the substitution of the possessor for the tenants not under disabilities cannot affect the interest in the whole land, of the tenant under a disability, the claims of the former should be barred. See *Bryan* v. *Hinman*, 5 Day (Conn.) 211; 10 HARV. L. REV. 384. The plaintiff's claim in the present case is for damages only; for the defendant's right of eminent domain makes it impossible to prevent the ultimate acquisition of the easement. Such a claim is clearly severable and is properly barred as to four-fifths, since the fifth interest derived from the co-tenant who was under a disability is not prejudiced thereby.

MANDAMUS — ACTS SUBJECT TO MANDAMUS — STATE'S ATTORNEY COMPELLED TO BRING QUO WARRANTO. — An Illinois statute provided "that the state's attorney, either of his own motion or at the instance of a private individual, may petition the court for leave to file an information in the nature of a *quo warranto*" against any one who should usurp any public office or any office in a corporation. The relator presented to the state's attorney a petition for an information in the nature of a *quo warranto* against one Brand, and filed affidavits making out a *prima facie* case that Brand was unlawfully usurping an office in a private corporation of which the relator was a director. The state's attorney refused to sign and file the petition. *Held*, that *mandamus* lies to compel him to do so. *People ex rel. Raster* v. *Healy*, 82 N. E. 599 (Ill.).

It is a fundamental rule that *mandamus* will not lie to compel the performance of duties resting in the discretion of the officer charged therewith. *People* v. *Dental Examiners*, 110 Ill. 180. It has been held in several jurisdictions, however, that the courts will interfere by *mandamus* in cases where an official has abused his discretion. *State* v. *St. Louis Public Schools*, 134 Mo. 296. Generally, under statutes similar to that of Illinois, the courts will not compel a prosecuting attorney to bring *quo warranto* proceedings to oust a public officer. *People* v. *Atty.-Gen.*, 22 Barb. (N. Y.) 114. The present decision properly distinguishes between the discretion that may be exercised by the state's attorney in such cases and that which may be used when the writ is directed against an officer of a private corporation. In the former case public policy requires substantial discretion to prevent unnecessary interference with public officials. In the latter case, since action by the state's attorney in no way affects the interest of the public, it is an abuse of his discretion if he refuses to proceed when a *prima facie* case is presented to him.